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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,532	03/04/2002	Carolyn J. Brown	2762-143	6642
6449	7590	11/04/2005		
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
			EXAMINER MOSSER, KATHLEEN MICHELE	
			ART UNIT 3715	PAPER NUMBER

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/090,532	Applicant(s) BROWN ET AL.	
	Examiner Kathleen Mosser	Art Unit 3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
 4a) Of the above claim(s) 26-48, 50-53 and 58-63 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-25, 49, 54-57 and 64-66 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

In response to the request for continued examination filed 05/26/05 and the response filed 09/08/2005, claims 1-66 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/25/2005 has been entered.

Response to Arguments filed with the Response 09/08/2005

2. Applicant contends that the feature "assessing a student's performance based on the level of support presented to the student" was present in original claim 66. Upon further review and reconsideration of the pending claims, and requirement for election the examiner agrees. As such the amendment to the claims does not constitute a shift of invention as previously asserted. Applicant's assertion that claim 49 was improperly grouped with species C is correct. As such rejoinder of the claim is proper. Claims 26-48, 50-53 and 58-63 remain withdrawn from the consideration. An action on the merits of claims 1-25, 49, 54-57 and 65-66 is presented below.

Claim Objections

3. Claim 49 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 49 recites the same feature previously added to claim 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 66 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 66 recites the step of "assessing the student's response to a task by evaluating the amount of support given the student regarding the task", but never teaches a step of providing support to student. Step C recites, "progressing or regressing the student based on monitoring the level of support needed". It is unclear what the student is being progressed or regressed in.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 14, 18-20, 24, 25, 49, and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Bloom et al (US 5597312). Bloom et al teaches a method including the steps of: pre-designing a learning task and/or skill level for a student; pre-designing a set of support related to the learning task or skill level (the authoring system 74, col. 5: 31-34); presenting the learning task or skill level to a student (col. 5: 51-54); presenting the student support from the pre-designed set of support (instructional assistance or hints); adjusting the support presented to the student based on responses to the learning task or skill level from the student (col. 9: 56 – col. 10: 6); and assessing the student's performance based on the level of support presented to the student (col. 9: 31-36 and 61-63), as in

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claims 1 and 49 and broader limitations in **claim 66**. The method is performed as a software program (**claim 54**), on an electronic device with a user input (**claim 2**), specifically a computer (**claim 5**) with speakers (**claim 4**) and a visual display (**claim 3**), see col. 25: 39-45 and Figure 4. The task being part of a curriculum (**claim 14 and 55**), the curriculum including multiple activities (**claim 18**), the activities may include multiple tasks (**claim 19**) (conversation practice, etc) is shown in col. 18: 8-19. The tasks including a question (**claim 20**) is shown in at least col. 16: 65 – col. 17: 3. The learning task or skill level has varying levels of difficulty (**claim 24**) wherein support is pre-designed for each level of difficulty (**claim 25**) is shown in col. 14: 33-63. Storing the student's responses (**claim 54**) is shown in at least col. 12: 26-41. Progressing the student based on monitoring the level of support needed for the student (**claim 66**) is shown in col. 10: 1-6.

6. Claim 64 is rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al (US 5727950). Cook et al teaches a method and system for instruction including: presenting a first learning task or skill level to a student (col. 24: 14-19); assessing the performance of the student in the first learning activity based on responses related to the first learning activity (col. 26: 55); informing a second learning activity or skill level of the student's level of performance relative to the first learning activity or skill level; deciding if the second learning activity or skill level should be altered ("remediation" abilities, see col. 28: 14-62.) and assessing overall performance of the student based on responses related to the first learning activity or skill level and responses related to the second learning activity or skill level (col. 26: 59-61, at least).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloom et al (US 5597312). Bloom et al teaches all aspects of the claimed invention as shown above but fails to specifically teach that the student is an elementary student, specifically a kindergarten to second grade student. Bloom et al does teach that the content may be modified for any area, see col. 25: 50-54. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to incorporate content appropriate for elementary education students because the applicant has not disclosed that the particular age group of the user provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Bloom's interactive education system, and applicant's invention to perform equally well with either the content taught by Bloom et al or modified for an elementary student.

Therefore, it would have been prima facie obvious to modify the Bloom et al system to include content appropriate for an elementary school user because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Bloom et al.

8. Claims 8-13, 15-17, 21-23, 56, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloom et al (US 5597312) in view of Wasowicz (US 6435877 B2). Bloom et al teaches all aspects of the claimed invention as shown above but fails to specifically teach that the learning task or skill level is related to various parts of language acquisition, as in **claims 8-13, 15-17, 56, 57 and 65**; that the task is a matching task (**claim 21**), a recognition task (**claim 22**), or a sequential task (**claim 23**).

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Wasowicz teaches a language education system which is performed on a computer. The system includes learning activities directed to both written and spoken language including auditory processing, phonological awareness, phonological processing and reading skills, see col. 2: 55-60. Multiple levels of difficulty are shown in col. 2: 63-67. The various types of exercises are shown in figures 4-6.

Bloom et al does not teach limit the invention to any one specific type of learning material and suggests that the system be adapted to other area, see col. 25: 50-54. As such one of ordinary skill in the art of education would be forced to seek alternative sources for educational content such as the Wasowicz system. Given this it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the language lessons of the Wasowicz invention into the agent based education system of Bloom et al so as to provide the student with a language education curriculum.

9. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al (US 5727950) in view of Wasowicz (US 6435877 B2). Cook et al teaches all aspects of the claimed invention as shown above but fails to specifically teach that the learning task or skill level is related to various parts of language acquisition.

Wasowicz teaches a language education system which is performed on a computer. The system includes learning activities directed to both written and spoken language including auditory processing, phonological awareness, phonological processing and reading skills, see col. 2: 55-60.

Cook et al does not teach that his invention is limited to any one specific type of learning material. As such one of ordinary skill in the art of education would be forced to seek alternative sources for educational content such as the Wasowicz system. Given this it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the language lessons of the Wasowicz invention into the agent based education system of Cook so as to provide the student with a language education curriculum.

Response to Arguments

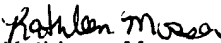
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10. Applicant's arguments with respect to claims 1-24, 54-57, 65 and 66 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kathleen Mosser
Patent Examiner
Art Unit 3715

November 2, 2005